

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LINDA S. PAURUS, a married  
woman,

Plaintiff,

vs.

GUARDIAN LIFE INSURANCE  
COMPANY OF AMERICA,

Defendant.

NO. CV-10-258-LRS

**ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

**BEFORE THE COURT** is Defendant's Motion for Summary Judgment (ECF No. 28). The motion is heard without oral argument.

**I. BACKGROUND**

Plaintiff, Linda Paurus, was hired by Guardian Life in 1989, and terminated on May 6, 2009. On February 16, 2009, Ms. Paurus was involved in a car accident while on a business trip. Ms. Paurus was injured in the accident, received medical treatment, and later filed a Worker's Compensation claim. She did not request any special accommodation or additional time off as a result of her injury and ongoing medical treatment, and stated that if she felt she needed accommodation she would have requested it.

Ms. Paurus alleges that her supervisor, Michelle Hart, upon learning that she had filed a Worker's Compensation claim, sent her a hostile email expressing her displeasure that Ms. Paurus had not informed her of her intent to file the claim. Ms. Paurus further

1 alleges that her relationship with Ms. Hart deteriorated after she filed the claim and that  
2 shortly afterward she received the lowest performance review she had ever received,  
3 though still receiving a “meets expectations.” Ms. Paurus suggests that there was no  
4 explanation for this low review or deterioration of relationship with her supervisor other  
5 than the fact that she filed a Worker’s Compensation claim. Defendant suggests that her  
6 performance review was lower because her work performance had deteriorated, but the  
7 only evidence of deteriorating work performance is from the period after the Worker’s  
8 Compensation claim was filed.

9 Defendant’s stated reason for Ms. Paurus’s termination was that she listened to a  
10 phone call between one of her subordinates, Judy Cazier, and Ms. Hart. Defendant alleges  
11 that listening to the call violated company policy, and was sufficiently serious to warrant  
12 termination. Defendants also suggest that Ms. Paurus’s attitude and performance had  
13 deteriorated, but statements made by Ms. Hart indicate the only reason for Ms. Paurus’s  
14 termination was that she listened to the phone call. Ms. Paurus alleges that there was no  
15 clear company policy against listening to a call between a subordinate employee and  
16 supervisor, and that in fact listening to the recorded phone calls of her subordinates was  
17 part of her job duties. She further alleges that she did not listen to the whole call, that she  
18 listened to the call by accident, informed Ms. Cazier that she had listened to the call, and  
19 that even if it were a violation of company policy, such a violation did not justify her  
20 termination given her 20 years of service and solid performance reviews. Whether the  
21 phone call could be listened to by accident is disputed.

22 Ms. Paurus brought claims for wrongful termination in violation of public policy  
23 and age and disability discrimination under Washington’s Law Against Discrimination  
24 Act. Defendant now moves for summary judgment on all claims. Plaintiff’s age  
25 discrimination claim has been withdrawn.

## II. SUMMARY JUDGMENT

A party is entitled to summary judgment when, considering all inferences drawn from the underlying facts in the light most favorable to the non-moving party, there is no genuine issue of material fact that might affect the outcome of the claim at trial. *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S.Ct. 993 (1962); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505 (1986). The evidence must be such that no reasonable trier of fact could return a verdict in favor of the non-moving party. *Anderson*, 477 U.S. at 248. The moving party has the burden of proving no genuine issue of material fact exists. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348 (1986). Once the moving party has carried this burden, however, the opposing party “must do more than simply show some metaphysical doubt as to the material facts.” *Id.* The opposing party must designate specific facts beyond the pleadings that establish a genuine issue of fact for trial. *Celotex Corp. V. Catrett*, 477 U.S. 317, 324-25, 106 S.Ct. 2548 (1986).

## III. DISCUSSION

### A. Overview

Issues of material fact remain with regard to Plaintiff’s wrongful termination in violation of public policy claim, and that claim must survive summary judgment. Plaintiff has not, however, raised any factual issues on which a reasonable trier of fact could find that disability discrimination played a role in her termination or hostile treatment. Termination of an at will employee violates public policy if the fact that the employee filed a Worker’s Compensation claim was a substantial factor leading to termination. If an employer produces evidence that an employee was terminated for legitimate reasons, the plaintiff has the burden of proving that the employer’s stated reasons are pretextual, or that filing a Worker’s Compensation claim remained a substantial factor leading to her

1 termination. Plaintiff has provided evidence on which a reasonable trier of fact could find  
2 that her filing a Worker's Compensation claim was a substantial factor in her termination.  
3 To succeed on a claim of wrongful discharge or hostile treatment under Washington's  
4 Law Against Discrimination Act a plaintiff must show that a disability was a substantial  
5 factor leading to her termination or hostile treatment. Plaintiff has not shown that she had  
6 a disability under the act, and, even if she did, there is no evidence whatsoever that such  
7 disability played a role in Defendant's decision to terminate Plaintiff or in any hostile  
8 treatment of Plaintiff.

9 *B. Wrongful Termination in Violation of Public Policy*

10 Wrongful termination in violation of public policy is a narrow exception to the  
11 common law doctrine of employment at will. Outside of narrowly defined exceptions, and  
12 absent an employment contract providing to the contrary, an employer has the right to  
13 terminate an employee with or without cause at any time. *Roberts v. Atlantic Richfield*  
14 *Co.*, 88 Wn.2d 887, 891, 568 P.2d 764 (1977). In Washington, and a majority of  
15 jurisdictions, courts recognize "a cause of action in tort for wrongful discharge if the  
16 discharge of the employee contravenes a clear mandate of public policy." *Thompson v. St.*  
17 *Regis Paper Co.*, 102 Wn.2d 219, 232, 685 P.2d 1091 (1984). This exception is narrow  
18 and must be applied cautiously to avoid swallowing the employment at will rule. *Briggs v.*  
19 *Nova Services*, 166 Wn.2d 794, 801-802, 213 P.3d 910 (2009) (citing *Sedlacek v. Hillis*,  
20 145 Wn.2d 379, 36 P.3d 1014 (2001)).

21 Retaliation for filing a Worker's Compensation claim gives rise to a common law  
22 claim for wrongful termination in violation of public policy. *Willmot v. Kaiser Aluminum*  
23 *& Chem. Corp.*, 118 Wn.2d 46, 68, 821 P.2d 18 (1991). To establish a claim of wrongful  
24 termination based on retaliation for filing a Worker's Compensation claim a plaintiff must  
25 show that she 1) exercised a right to pursue a workers compensation claim, 2) that she  
26

1 was discharged, and 3) that there was a causal connection between filing the Worker's  
2 Compensation claim and being discharged. *Id.* at 68-69. A causal connection can be  
3 demonstrated simply by evidence that the employee's work was satisfactory before the  
4 Worker's Compensation claim was filed, the employer knew the employee filed a  
5 Worker's Compensation claim, and the employer terminated the employee within  
6 relatively close temporal proximity to the filing of the claim or discovery that the claim  
7 was filed. *Anica v. Wal-Mart Stores, Inc.* 120 Wn. App. 481, 491, 84 P.3d 1231 (2004).  
8 Once the plaintiff has made a prima facie case of retaliatory discharge, the burden shifts  
9 to the employer to "articulate a legitimate nonpretextual nonretaliatory reason for the  
10 discharge." *Id.* at 70. The employer need only produce evidence of a legitimate reason for  
11 the termination, the burden of persuasion remains on the plaintiff.

12 Plaintiff has met her burden of production for a wrongful discharge claim. It is  
13 undisputed that Plaintiff pursued her right to file a Worker's Compensation claim and that  
14 she was discharged 7 weeks after filing the claim. The close proximity between filing the  
15 claim and her discharge, coupled by nearly 20 years of at least satisfactory performance  
16 reviews up until the time of her injury and claim are sufficient to meet the burden of  
17 production for the causation element of the wrongful termination claim. Defendant  
18 alleges that Plaintiff was terminated for listening to a phone call between her supervisor  
19 and one of her subordinates, and because her job performance had been deteriorating in  
20 the period leading up to her termination. These allegations and the evidence supporting  
21 them are sufficient to rebut the initial inference of wrongful termination when the plaintiff  
22 has established a prima facie case.

23 The plaintiff must show by a preponderance of the evidence that the employer's  
24 stated motivation for the termination was pretextual, or that retaliation for filing a  
25 Worker's Compensation claim was nevertheless a substantial factor leading to the  
26 termination. *Renz v. Spokane Eye Clinic, P.S.*, 114 Wn.App. 611, 622, 60 P.3d 106

1 (2002). An employee can show that an employer's stated reason for termination is  
2 pretextual by showing "(1) the reasons have no basis in fact, or (2) even if based in fact,  
3 the employer was not motivated by these reasons, or (3) the reasons are insufficient to  
4 motivate an adverse employment decision." *Id.* at 619. (quoting *Grimwood v. Univ. of*  
5 *Puget Sound, Inc.*, 110 Wash. 2d 355, 364, 753 P.2d 517 (1988). "A factor supporting the  
6 decision [to terminate] is 'substantial' if it so much as tips the scales one way or the  
7 other." *Renz*, 114 Wn.App. at 621.

8 There remain issues of material fact regarding whether Defendants stated reason  
9 for terminating Plaintiff was legitimate, or, even if it was legitimate, whether the fact that  
10 Plaintiff filed a Worker's Compensation claim was nevertheless a substantial factor  
11 leading to her termination. Plaintiff has presented evidence that her supervisor was upset  
12 with her for not informing her that she intended to file a Worker's Compensation claim  
13 following her car accident. Plaintiff has also presented evidence that her performance  
14 reviews became more negative and that her relationship with her supervisor deteriorated  
15 following her supervisor learning that she had filed a claim. Plaintiff further alleges that  
16 given her 20 years of at least satisfactory service to the company, a minor violation of  
17 company policy would not be sufficient to justify her termination, that in fact there was  
18 no clear company policy against her listening to the phone call, listening to her  
19 subordinates phone calls was part of her job, and that she only overheard the call in  
20 question by accident. On the basis of the record, none of these allegations can be  
21 eliminated on summary judgment as a matter of law, they are issues of fact, the resolution  
22 of which will effect the outcome of the case, and must be decided at trial.

23 *C. Disability Discrimination Under Washington's Law Against Discrimination Act*

24 To establish a *prima facie* case for wrongful discharge under Washington's Law  
25 Against Discrimination Act the plaintiff must show 1) that she was disabled, 2) that she  
26 was discharged, 3) that she was doing satisfactory work, and 4) that she was replaced by

1 someone who was not disabled. *Becker v. Cashman*, 128 Wn. App. 79, 85, 114 P.3d 1210  
2 (2005). Plaintiff must further show that her disability was a substantial factor in her  
3 termination. *Id.*

4 “Disability” means the presence of a sensory, mental, or physical  
5 impairment that:

- 6 (i) Is medically cognizable or diagnosable; or  
7 (ii) Exists as a record or history; or  
8 (iii) Is perceived to exist whether or not it exists in fact.

9 RCW 49.60.040(7)(a) (2011). Establishing a prima facie case creates a rebuttable  
10 presumption of discrimination and the burden then shifts to the employer to provide  
11 evidence of a nondiscriminatory justification for termination. If the employer provides  
12 such evidence, the plaintiff must then show to a preponderance of the evidence that the  
13 justification is merely a pretext, or that the disability was nevertheless a substantial factor  
14 in the termination. *Becker*, 128 Wn. App. at 85-86 (citing *Hill v. BCTI Income Fund-I*,  
15 144 Wash. 2d 172, 181, 23 P.3d 440 (2000)).

16 The standard for making a claim of hostile treatment under the Act is basically the  
17 same: a plaintiff must show that she was disabled, able to perform her duties with  
18 reasonable accommodation, and that her disability was a substantial factor leading to  
19 hostile treatment by the employer. *Id.* at 85.

20 Plaintiff has not made a prima facie case for disability discrimination. There is no  
21 evidence that plaintiff had a disability under RCW 49.60.040. Assuming, arguendo, that  
22 there was such evidence, Plaintiff has not shown that her disability played any role  
23 whatsoever in her termination or alleged hostile treatment. Plaintiff never requested any  
24 time off or other accommodation, so termination could not have been in retaliation for  
25 taking such time off. Plaintiff has admitted that she would have taken time off or  
26 requested accommodation if she had needed it, showing that she had no fear of reprisal.

1 There is no evidence on the record showing that any alleged disability could have been a  
2 factor in Plaintiff's termination or alleged hostile treatment.

3  
4 **IV. CONCLUSION**

5 Plaintiff has raised issues of material fact regarding whether filing a Worker's  
6 Compensation claim was a substantial factor leading to her termination, and whether  
7 Defendant's stated reason for her termination was pretextual. Plaintiff has not raised any  
8 issues of fact on which a reasonable trier of fact could find that disability discrimination  
9 was a substantial factor leading to her termination or hostile treatment. Accordingly,

10 **IT IS ORDERED** that Defendant's Motion For Summary Judgement (ECF No.  
11 **27)** is **DENIED in part** and **GRANTED in part**:

12 1. Defendant's Motion for Summary Judgment on Plaintiff's claim of wrongful  
13 termination in violation of public policy is **DENIED**.

14 2. Defendant's Motion for Summary Judgment on Plaintiff's claim of disability  
15 discrimination under Washington's Law Against Discrimination Act is **GRANTED**.

16 **IT IS SO ORDERED.** The District court Executive is directed to enter this Order and  
17 provide copies to counsel.

18 **DATED** this 22nd day of August, 2011.

19 *s/Lonny R. Suko*

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21 LONNY R. SUKO  
22 United States District Judge  
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